

Application No. 10/809,120
Reply to Office Action of 18 Jan 2007
Response to Decision of 13 Sep 2007
Substitute Amendment dated 19 Sep 2007

REMARKS

In response to the Office action of January 18, 2007 the applicant, on June 29, 2007, filed an Amendment and a Petition under 37 CFR 1.78(a)(3). The Petition was dismissed by a Decision Dismissing Petition Under 37 CFR 1.78(a)(3), dated September 13, 2007. This Substitute Amendment is submitted in response to the Office Action of January 18, 2007, and the Decision Dismissing Petition Under 37 CFR 1.78(a)(3) dated, September 13, 2007.

Telephone Interview

The applicant expresses appreciation for the telephone interview with Senior Petitions Attorney Douglas I. Wood on September 18, 2007. In the interview the following understandings were reached:

1. The Applicant's submission of June 29, 2007, requires correction to:
(a) reference in the amendment to the specification the continuation-in-part relationship of the present application to the immediately preceding copending application, and (b) eliminate in the amendment to the specification the incorporation by reference;
2. A substitute amendment effecting the above matters will be filed;
3. A renewed petition based on the substitute amendment will be considered; and
4. It is not necessary to pay an additional surcharge under 37 CFR 1.17(t).

Specification

The specification has been amended to contain a reference to each prior-filed application from which this application claims benefit of an earlier filing date and identifies the relationships between the applications.

A Renewed Petition under 37 CFR 1.78(a)(3) filed herewith claims the benefit of the prior-filed applications. The petition includes an identification of the prior-filed applications and a statement that the failure to make the claim in a timely matter was unintentional.

The surcharge required by 37 CFR 1.17(t) was authorized and paid in connection with the Petition Under 37 CFR 1.78(a)(3) filed June 29, 2007.

Claims

Bowman 5,797,398 will not be a reference against claims 1-9 present in the application upon grant of the Renewed Petition under 37 CFR 1.78(a)(3) as the Bowman reference is one from which priority is claimed. The filing date of Bowman 5,797,398 is August 13, 1993.

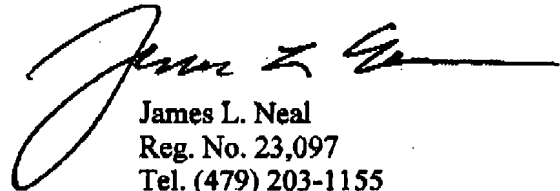
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The examiner's position is that claims 1, 2 and 4-9 find support in the prior-filed application Ser. No. 10/364,773 and thus have a filing date of March 24, 2004. Claims 1, 2 and 4-9 also find support in all the other prior-filed nonprovisional applications identified in the petition because all applications identified in the petition have identical disclosures. Thus, upon grant of the Renewed Petition the effective filing date of claims 1,2 and 4-9 will be August 13, 1993. August 13, 1993 is earlier than the filing date of Callister et al. 7,087,026, and Callister will not be a reference against claims 1, 2 and 4-9.

With respect to claim 3 the effective filing date is March 24, 2004 (or March 26, 2003, the filing date of provisional application 60/458,100). Even though Callister may stand as a reference against claim 3, claim 3 is allowable over Callister as it depends from claim 2.

It is submitted that claims 1-9 define patentable subject matter not anticipated or obvious in view of prior art. Allowance is respectfully requested.

Respectfully submitted,



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